

SENATE BILL REPORT

SHB 2360

As Reported by Senate Committee On:
Law & Justice, February 20, 2018

Title: An act relating to increasing penalties for the crime of patronizing a prostitute.

Brief Description: Concerning sexual exploitation.

Sponsors: House Committee on Public Safety (originally sponsored by Representatives Pellicciotti, Kraft, Dolan, McDonald, Orwall, Hayes, Van Werven, Klippert, Lovick, Kloba, Fey, Tarleton, Johnson, Sawyer, Kirby, Stanford, Reeves, Jinkins, Ryu, Ortiz-Self, Riccelli and Gregerson).

Brief History: Passed House: 2/08/18, 97-0.

Committee Activity: Law & Justice: 2/16/18, 2/20/18 [DPA].

Brief Summary of Amended Bill

- Renames the crime of patronizing a prostitute to commercial sexual abuse.
- Reclassifies second and subsequent commercial sexual abuse convictions and separates them into a new subsection as gross misdemeanors.
- Revises cross references to the crime of patronizing a prostitute to its new name, commercial sexual abuse.
- Specifies that the crime of commercial sexual abuse is committed when the perpetrator provides anything of value in exchange for engaging in sexual conduct.
- Changes the bill title to AN ACT Relating to commercial sexual abuse.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; Angel, Assistant Ranking Member; Darneille, Frockt and Wilson.

Staff: Melissa Burke-Cain (786-7755)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background: Patronizing a Prostitute. A person commits the crime of patronizing a prostitute when:

- pursuant to a prior understanding, a person pays a fee to another person as compensation for such person or a third person having engaged in sexual conduct with the person; or
- a person pays or agrees to pay a fee to another person pursuant to an understanding that in return therefor such person will engage in sexual conduct with the person; or
- a person solicits or requests another person to engage in sexual conduct with the person in return for a fee.

A person may commit the crime of patronizing a prostitute in more than one location. The location of the crime is any location where the defendant commits any act that constitutes part of the crime. A person who sends a communication to patronize a prostitute commits the crime both at the place where they make the contact and where the communication is received, subject to the prohibition on double jeopardy. Patronizing a prostitute is a misdemeanor. For purposes of the crime, sexual conduct means sexual intercourse or sexual conduct as defined by law.

The penalty for committing a misdemeanor is a maximum confinement of 90 days and a maximum fine of \$1,000. The penalty for a gross misdemeanor is a maximum confinement for 364 days and a maximum fine of \$5,000.

Promoting Travel for Prostitution. A person commits the crime of promoting travel for prostitution when the person knowingly sells or offers to sell travel services that include or facilitate travel for the purpose of engaging in what would be the crimes patronizing a prostitute or promotion prostitution if occurring in this state.

Travel services include transportation by air, sea, or ground, hotel or any lodging accommodations, package tours, or vouchers or coupons redeemable for future travel or accommodations for a fee, commission, or other valuable consideration. Promoting travel for prostitution is a Class C felony.

Additional Sentencing Requirements for Patronizing a Prostitute and Commercial Sexual Abuse of a Minor. The court must impose additional conditions on a person who is convicted of patronizing a prostitute, or receives a deferred sentence or prosecution. The offender must:

- have no subsequent arrests for patronizing a prostitute or commercial sexual abuse of a minor;
- remain outside a court-prescribed geographic area where the crime occurred, unless the requirement interferes with the offender's employment, residence, or is otherwise infeasible; and
- fulfill the terms of a program designed to educate offenders about the negative costs of prostitution—first time offenders only.

Vehicle Impoundment. At arrest for a suspected crime of patronizing a prostitute, or other listed crimes, the arresting law enforcement officer may impound the suspect's vehicle if:

1. the motor vehicle was used in the crime's commission; or
2. the arrested person owns the vehicle or the vehicle is a rental; and either:

- a. the arrested person has a previous conviction for patronizing a prostitute or the other listed crimes; or
- b. the location of the offense falls within a locally-designated area of increased prostitution-related criminal activity.

Collecting DNA Samples. Under current law, a biological sample for DNA identification analysis must be obtained from an adult or a juvenile convicted of a felony, or convicted of other specified crimes including patronizing a prostitute.

Summary of Amended Bill: The crime of patronizing a prostitute is renamed as the crime of commercial sexual abuse. The first conviction for commercial sexual abuse is classified as a misdemeanor offense. Any subsequent commercial sexual abuse convictions are classified as gross misdemeanors whether charged under the statute or an equivalent municipal ordinance and subsequent offenses are separated into a new subsection (5).

Specifies that the crime of commercial sexual abuse is committed when the perpetrator provides anything of value in exchange for engaging in sexual conduct.

The crime of commercial sexual abuse replaces the formerly-named patronizing a prostitute where cross-referenced in these statutes:

- promoting travel for prostitution—RCW 9A.88.085;
- imposing mandatory sentencing requirements upon conviction, deferred prosecution or deferred sentence—RCW 9A.88.130;
- impounding vehicles used in specified crimes—RCW 9A.88.140; and
- collecting DNA samples—RCW 43.43.754.

The bill title is changed to: "AN ACT Relating to commercial sexual abuse."

EFFECT OF LAW & JUSTICE COMMITTEE AMENDMENT(S):

- Specifies that the crime can be committed when perpetrator provides or agrees to provide anything of value rather than being limited to providing or agreeing to provide a fee in exchange for engaging in sexual conduct.
- Allows a prosecutor to charge a violation of RCW 9A.88.110(4) for the first offense as a misdemeanor and to charge a violation of RCW 9A.88.110(5) for the second and subsequent offenses as a gross misdemeanor.
- Renames the crime as "commercial sexual abuse."
- Changes the bill title from "AN ACT Relating to increasing penalties for the crime of patronizing a prostitute" to "AN ACT Relating to commercial sexual abuse."

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony on Substitute House Bill: PRO: This bill creates an asymmetrical enforcement model that penalizes the perpetrator more than the person who is the prostitute. It conforms the RCW to the term, sexual exploitation, that the Seattle Municipal Code uses. The current law gives a person an unlimited amount of sex buying, with the same misdemeanor penalty, no matter how many offenses they commit. This bill addresses the demand side of prostitution. Without the purchasers there would be no prostitution. If we are serious about the anti-trafficking legislation the state has passed, then increase the penalty for those who have a choice; the buyers on the demand side. The low misdemeanor penalty says it is okay to buy sex and only rationalizes the behavior of men. As a result there is a worldwide network of sex trafficking. If we are going to address the problem of sex trafficking, we need to get to the root cause. People of color and other marginalized groups are over represented in these crimes, gender violence is endemic in our culture, and prostitution is a part of gender-based violence. Of persons in prostitution who are polled, 84 percent report they are coerced, trapped, and want to get out of prostitution. Sex buyers don't care about the prostituted person or child. Here are what buyers say: they enjoy the thrill of prostitute hunting; a prostitute is just a biological object, like a cup of coffee, when you are done you throw it away. Washington has an opportunity to show it is serious about stopping sex trafficking; prostitution is on the continuum of gender-based violence; consider this in the context of the #metoo movement. For sex trafficking, it is the buying that creates the crime; it is a crime that causes harm. Persons who are convicted of patronizing a prostitute for the first time are required to take a class, give DNA, and pay penalties with a contribution going to assist victims. Elevating the offense's classification has a deterrent effect, and a deterrence value for repeat offenders. Many buy sex habitually, many times each month. Under the bill, first time offenders will still be charged under the current misdemeanor offense. It is immigration-safe because a person would only be deportable on the second or subsequent offenses. The proposed name change is consistent with what is going on with this crime and with the nature of the crime. In fact those buying sex are committing harm. Seattle changed the name of the crime in 2015. The name change puts buyers on notice that we take the crime seriously. There is great work going on all around the state to combat sex trafficking. If buying sex is a crime that never gets any more serious than fishing without a license, there is little effect on deterring demand. Words matter. The crime of patronizing a juvenile prostitute was changed to the crime of commercial sexual abuse of a minor. Placing buying sex into a category of exploitation for adults is consistent. Sexual exploitation does not magically end at age eighteen; it carries on into adulthood. There is no way to make sex trafficking safe. Sex trafficking involves a victim, trafficker, and a buyer of trafficked sex. Commercial sexual abuse would be a better name than sexual exploitation but the name patronizing a prostitute valorizes the buyer. The law should also be amended to reflect that the exchange is not limited to a fee but can be anything of value. Familial trafficking is prevalent in tribal communities and can include rent, food, a place to stay. The trauma of prostitution does not go away. Even if the physical effects are fixed, the emotional and psychological harm goes on forever. Most of the people being exploited in trafficking are the predominantly marginalized persons, not white privileged people. We cannot create a system for a few privileged people. This is a market-driven enterprise. Buyers caught in sting operations are caught with ropes, zip ties, shovels, and knives. This bill does not make the crime more dangerous. It is dangerous now any way. Many exploitation victims do not have a traditional pimp; they have an on-line manager. It is hard to get honest information about a buyer's level of threat or violence. Germany has regulated prostitution and each brothel room has three panic buttons; the work is inherently

dangerous. Businesses face a negative impact from commercial sex that is not limited to the typical locations of hotels, parking lots, restaurants or bars. This region is known for employees, particularly tech workers, using business time to procure sex on line. The peak time for online procurement is 2 pm in the middle of the work day. Many say they met sex buyers on a business premises. For the businesses where that is occurring, there is lost productivity, health and safety risks, security risks, and potential for a hostile work environment. Sex buyers often use their business emails as proof they are not cops. According to the Department of Justice, Seattle has the fastest growing sex industry in the country.

CON: We oppose the name change. I am a prostitute and this is about labor vulnerabilities. The name change negatively impacts persons in the sex trade, the sex workers. Commercial sexual abuse does happen, but changing the demand laws makes it more difficult to screen clients and stay safe. This is a black market industry with a gray spectrum. Not all sex workers are females and not every encounter is sexual abuse. Violent crime will occur whether it is a misdemeanor or a gross misdemeanor. If the reasonably safe clients are removed from the pool of clients, the odds of a bad apple patron goes up. The approach here is like the war on drugs. We would like to have the violent predators out, but we can't have an honest dialog with prosecutors. Please consider the unintended consequences. Sex workers need self-determination and safety. It is wrong to conflate all prostitution with sexual exploitation. Not every exchange is a sexual assault and you cannot say that all sex workers are victims. There is a current study underway to assess the effects of the name change to sexual exploitation on housing and employment discrimination. Background check errors have occurred because of unfamiliarity with what sexual exploitation entails.

OTHER: Enhancing the penalties makes good sense, but the purpose of the title of a crime is to put people on notice of what constitutes the crime. Sexual exploitation is vague. It doesn't tell you the behavior that is proscribed, and it creates confusion with the crime of sexual exploitation of a minor. The new name makes the crime look more heinous, but the purpose of the name is to describe the behavior, not make a political statement about the crime in the name.

Persons Testifying: PRO: Representative Mike Pellicciotti, Prime Sponsor; Debra Boyer, Organization for Prostitution Survivors; Valiant Richey, citizen; Heidi Sargent, Seattle City Attorney's Office; Jeri Moomaw, Innovations HTC; Claudia Lawrence, Seattle Against Slavery, Federal Way Coalition Against Trafficking; Rachel Padgett, Businesses Ending Slavery and Trafficking; Kyra Doubek, CSEC Behavioral Health Specialist and Survivor, Kent Youth & Family Services.

CON: Fajer Saeed Ebrahim, Coalition for Rights and Safety for People in the Sex Trade; Savannah Sly, Sex Workers Outreach Project of Seattle.

OTHER: Brad Meryhew, Washington Association of Criminal Defense Lawyers.

Persons Signed In To Testify But Not Testifying: No one.